



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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Michael O. Leavitt
Governor

Lowell P. Braxton
Division Director

August 19, 1998

CERTIFIED RETURN RECEIPT REQUESTED
No. Z 350 464 508

Mr. Lon Thomas, President
American Stone, Inc.
4040 South 300 West
Salt Lake City, Utah 84107

Re: Findings of Fact, Conclusions of Law and Order for Notice of Agency Action,
American Stone and Building Incorporated, Peoa Blonde Quarry, S/043/012, and
Heber Quarry, S/051/001, Summit and Wasatch Counties, Utah

Dear Mr. Thomas:

On August 4, 1998 an Informal Hearing was held to appeal the Notice of Agency Action issued July 20, 1998 to American Stone and Building, Incorporated for the Peoa Blonde Quarry, OGM file number S/043/012 and the Heber Quarry, file number S/051/001. As a result of a review of all pertinent data and facts, including those presented in the Informal Hearing, the following shall constitute the Findings of Fact, Conclusions of Law and Order in this matter:

Background

The July 20th Notice of Agency Action (the "Notice") was issued to American Stone and Building Inc. ("AS&B"), Incorporated because both the Peoa Blonde Quarry and the Heber Quarry had exceeded the 5-acre maximum disturbance allowed for Small Mining Operations by the Utah Minerals Regulatory Program. The Notice resulted from site inspections conducted by the Minerals Regulatory Program, and AS&B had previously been copied with the inspection reports that delineated the exceedances. The Notice read: "American Stone is hereby directed to immediately suspend all mining-related activities on the Peoa Blonde and Heber Quarries until this Notice of Agency Action is resolved".

By Fax dated July 27, 1998, AS&B requested an Informal Hearing to appeal the Notice.

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The Informal Hearing

On August 4th, an Informal Hearing appealing the Notice was conducted in Room 2130 of the Department of Natural Resources Building. The Division was represented by Mary Ann Wright, Associate Director of Mining, Wayne Hedberg, Permit Supervisor, Minerals Regulatory Program, and Lynn Kunzler and Tom Munson, Sr. Reclamation Specialists, Minerals Regulatory Program. AS&B was represented by Lon Thomas.

Mr. Thomas was provided with a set of the regulations governing formal and informal proceedings under the Minerals Regulatory Program.

Wayne Hedberg and Lynn Kunzler reviewed the basis for the site inspections that resulted in a finding of Small Mining Operations disturbed acreage exceedances for the respective quarries. Mr. Kunzler's discussion was supported by reference to topographic maps with disturbed areas shown and disturbed acreages calculated. Photographic evidence was presented documenting the nature of the disturbance, and the use being made of the disturbed areas. Photographic evidence of the fuel spill, and trash at the Heber Quarry that is mentioned in the Notice was presented and discussed.

Lon Thomas indicated that he had ordered cleanup of the trash at the Heber Quarry. He reviewed his policy that trash be transported to an off-site dumpster. The trash disposal site is behind a locked gate, and a loader is parked to prevent other access. He described spill containment steps initiated subsequent to the inspection that should preclude soil and water contamination in the event of a failure of the diesel fuel storage tank. Mr. Thomas was unsure of storage requirements for motor oils, hydraulic fluids and other liquid hydrocarbons. The Division offered to research these requirements, since they are not found in the Minerals Regulatory Program (even though ultimate compliance is Mr. Thomas's responsibility).

In discussing the failure of AS&B's operations to meet the Small Mine definition under Utah Code Annotated Section 40-8-14(15) by exceeding the five-acre limit on surface disturbances, Mr. Thomas stated his opinion that roads should not be considered in the disturbed acreage for purposes of acreage calculations. In the ensuing discussion the Division representatives noted that under UCA Section 40-8-4(7) "lands affected" (by mining operations) include roads, and are therefore subject to regulation. Mr. Thomas did not provide any evidence suggesting the Division's disturbed area acreage calculations were incorrect.

Mr. Thomas suggested that conversion from a Small Mine status to a Large Mine status could subject his operation to public comment that might jeopardize the continued existence of the mine. The discussion that followed suggested that an approved reclamation plan could help

allay public fears that the operation was not environmentally sound, while the present non-compliance status of the Peoa Blonde and Heber quarries provided fuel to anti-mining sentiments. Mr. Thomas stated a fear that Heber City could close the Heber Quarry, the location of the quarry outside the city limits notwithstanding.

In anticipation of final reclamation, Mr. Thomas discussed appropriate means of storing trees, brush and slash along with salvaged topsoil, and asked that if commingling of natural organic matter with topsoil was acceptable, would it be possible to leave broken pallets on site. The Division responded that pallets and pallet fragments were considered trash, and entrainment of these materials in overburden or topsoil was not an acceptable practice. Mr. Thomas was told that an approved waste disposal site could be part of an approved mining and reclamation plan.

During the course of the discussion Mr. Thomas noted that he has five or six (possibly seven) mining operations under regulation by the Minerals Regulatory Program. The Division noted that AS&B may be the largest commercial building stone supplier in Utah, and suggested that development of a company-wide environmental program might be preferable to the present piecemeal approach to environmental compliance.

In discussing an appropriate amount for interim reclamation bonds (those bonds required for Small Mining acreage exceedances prior to posting bond under an approved mining and reclamation permit), the Division noted that per acre bonding estimates could be less than the average \$3000/acre figure for areas disturbed by roads. Mr. Thomas suggested an interim bond amount of \$20,000 for both quarries, however the Division's average disturbed acre bond amount for the two operations is \$ 66,000. The Division offered to calculate interim bonding figures for the Peoa Blonde and Heber quarries giving consideration to the area disturbed by roads at both sites. Mr. Thomas was interested in seeing this done.

The Division suggested that given the number of mine sites held by AS&B there might be potential for AS&B to acquire a "corporate surety bond" for reclamation surety in the form of an insurance premium. The Division agreed to provide Mr. Thomas with a list of approved surety companies in the event he chose to pursue this approach.

Findings

1. A Notice of Agency Action is the appropriate mechanism for the Minerals Regulatory Program to use when initiating formal and informal adjudicative proceedings.
2. The Notice of Agency Action dated July 20, 1998 for the Peoa Blonde and Heber Quarry was appropriately noticed.

3. The request for appeal of the July 20, 1998 Notice was timely.
4. The factual position established by the Division in the Notice asserting an exceedance of disturbed area allowable under the Small Mining regulations at the Peoa Blonde and Heber Quarry was not disputed by Mr. Thomas during the Informal Hearing.
5. AS&B has exceeded the allowable disturbances under the Small Mining Regulations for its Peoa Blonde and Heber Quarry operations. Both operations require a change in permit status to a Large Mining Operation.
6. Disturbances under Large Mining Operations regulations require a reclamation surety.
7. Mr. Thomas' understanding of Division and Board of Oil, Gas and Mining permitting and bonding requirements by virtue of previous exposure to the Board and Division makes him knowledgeable of the requirements of the Minerals Regulatory Program.

Order

The July 20, 1998 Notice of Agency Action is modified as follows:

1. Subject to compliance with other terms of this Order, "mining operations" defined by 40-8, UCA and contemplated in the Small Mining Notices of Intent for the Peoa Blond Quarry and the Heber Quarry may proceed, exceedances to Small Mining Notice of Intent disturbed acreage maximums notwithstanding.
2. Interim Bond amounts are established:
 - a. For Peoa Blonde Quarry \$ 25,000
 - b. For Heber Quarry \$ 28,000.

Reclamation surety estimates that show how the above figures were derived by the Division are attached. For purposes of interim surety calculation, the Division's estimates were rounded down to the nearest thousand dollars at each operation.

3. Interim bonds for the Peoa Blonde and Heber Quarries in the above amounts, and in a form prescribed by regulation for final reclamation sureties shall be delivered to the Division of Oil, Gas and Mining's Minerals Program no later than 60 days after receipt of this letter by American Stone and Building Incorporated.

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4. American Stone and Building Incorporated shall file complete and accurate Large Mining permit applications for the Peoa Blonde and Heber Quarries with the Division of Oil, Gas and Mining's Minerals Program no later than close of business January 4, 1999.


5. Should American Stone and Building Incorporated fail to comply with items three and/or four of this Order, the Division of Oil, Gas and Mining will initiate a Notice of Agency Action with the Board of Oil, Gas and Mining asking for an order causing immediate reclamation of mine sites not appropriately permitted and/ or bonded. Further, the Division will ask that the Board find American Stone and Building Incorporated's failure to permit or bond either of these operations a knowing and willful violation of the Utah Mined Land Reclamation Act, and that such action be subject to lawful penalty.

6. Within two weeks of the date of this Order, the Division shall inspect the Heber Quarry to determine compliance with the clean-up activities required in Mitigation Requirements # 3 of the Notice. Results of the inspection shall be reported to the Associate Director of Mining.

Remarks

As contemplated at R 647-5-106-17, within ten (10) days of your receipt of this Order, you or your agent may make a written appeal of this Order to the Board of Oil, Gas and Mining. Failure to comply with this requirement will result in a waiver of your right of further recourse under this Order.

Sincerely,



Lowell P. Braxton
Conference Officer

dr
Enclosure

cc: M. Wright
W. Hedberg
D. Moquin

p:braxton\minerals\lthomas.wpd

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RECLAMATION SURETY ESTIMATE

American Stone

Peoa Quarry

m043/012

Prepared by Utah State Division of Oil, Gas & Mining

THIS IS INTERIM BOND CALCULATION THE AMOUNT WILL BE ADJUSTED UP OR DOWN
BASED ON ACCUAL COSTS FOR THIRD PARTY FOR APPROVED RECLAMATION PLAN
PLAN TO BE SUBMITTED BY JANUARY 1, 1999.

- Scale house to be removed, two trailers to be removed

- access road from highway to quarry area not included

- Assume 6 acres of pads, rock storage, etc.

- Total affected area = storage areas, quarry areas, Waste dumsroads = 6 + 2 + 4 = 12.0 acres

- Total disturbed area requiring reclamation = 12.0 acres

- No escalation, this is interim bond

- Amount of disturbed area which will receive reclamation treatments

12.0 acres

Activity	Quantit	Units	\$/unit	\$	Note
Removal of structures	3	each	750	2,250	(6)
Ripping storage areas, work areas, dumps	12.0	acre	269	3,228	(1)
Regrading quarry areas - dozer	5,600.0	CY	1.1	6,160	(2)
Topsoil replacement - 6 inches	9,700	CY	0.46	4,462	(3)
Broadcast seeding (12.0 acres)	12.0	acre	170	2,040	(4)
Reseeding -broadcast seeding (~25% of area)	3.0	acre	170	510	(4)
General site cleanup & trash removal	12.0	acre	50	600	(5)
Equipment mobilization -	2	equip	700	1,400	(6)
Reclamation Supervision	7	days	356	2,492	(7)
		Subtotal		23,142	
10% Contingency				2,314	
		Subtotal		\$25,456	
		Total		\$25,456	
		Rounded surety amount in yr 2003-\$			\$25,500
Average cost per reclaimed acre =		\$2,125			

RECLAMATION SURETY ESTIMATE - NOTES	
Note	
(1)	Means 1997 & Rental Rate Blue Book 4/97: Cat D8N, U, multi shank rippers, speed 0.8 mph
(2)	US Forest Service general estimate
(3)	Means 1997 & Rental Rate Blue Book 4/97: Cat D8N, U, mtl 2550 lb/CY, 100 ft push
(4)	DOGM general estimate - broadcast seeding
(5)	DOGM general estimate - site cleanup & trash removal
(6)	DOGM general estimate - equipment mobilization
(7)	Means 1997, 010-036-0180, project manager, minimum \$1780/wk

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RECLAMATION SURETY ESTIMATE

American Stone

Heber Quarry

M/051/001

last revision08/17/98

filename m51-01.wb2page "DRAFT ESTIMATE"

Wasatch County

Prepared by Utah State Division of Oil, Gas & Mining

THIS IS INTERIM BOND CALCULATION THE AMOUNT WILL BE ADJUSTED UP OR DOWN
BASED ON ACCUAL COSTS FOR THIRD PARTY FOR APPROVED RECLAMATION PLAN
PLAN TO BE SUBMITTED BY JANUARY 1, 1999.

- work crew quarters (trailer?) to be removed

- access road from highway to quarry area not included

- Assume 6 acres of pads, rock storage, etc.

- Total affected area = storage areas, quarry areas, Waste dumps, roads = 10.0 acres

- Total disturbed area requiring reclamation = 10.0 acres

- No escalation, this is interim bond

- Amount of disturbed area which will receive reclamation treatments10.0 acres

Activity	Quantit	Units	\$/unit	\$	Note
Removal of structures	1	each	750	750	(6)
Ripping storage areas, work areas, dumps, roads	10.0	acre	269	2,690	(1)
Regrading quarry areas - dozer	1,100.0	lf	10	11,000	(2)
Topsoil replacement - 6 inches	8,100	CY	0.46	3,726	(3)
Broadcast seeding (12.0 acres)	10.0	acre	170	1,700	(4)
Reseeding -broadcast seeding (~25% of area)	2.5	acre	170	425	(4)
General site cleanup & trash removal	10.0	acre	50	500	(5)
Equipment mobilization -	2	equip	700	1,400	(6)
Reclamation Supervision	10	days	356	3,560	(7)
		Subtotal		25,751	
10% Contingency				2,575	
		Subtotal		\$28,326	
		Total		\$28,326	
		Rounded surety amount in yr 2003-\$		\$28,300	
	Average cost per reclaimed acre =		\$2,830		

RECLAMATION SURETY ESTIMATE - NOTES	
Note	
(1)	Means 1997 & Rental Rate Blue Book 4/97: Cat D8N, U, multi shank rippers, speed 0.8 mph
(2)	US Forest Service general estimate
(3)	Means 1997 & Rental Rate Blue Book 4/97: Cat D8N, U, mtl 2550 lb/CY, 100 ft push
(4)	DOGM general estimate - broadcast seeding
(5)	DOGM general estimate - site cleanup & trash removal
(6)	DOGM general estimate - equipment mobilization
(7)	Means 1997, 010-036-0180, project manager, minimum \$1780/wk

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SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Mr. Lon Thomas, President
American Stone, Inc.
4040 South 300 West
Salt Lake City, UT 84107

4a. Article Number

Z 350 464 508

4b. Service Type

- | | |
|---|---|
| <input type="checkbox"/> Registered | <input checked="" type="checkbox"/> Certified |
| <input type="checkbox"/> Express Mail | <input type="checkbox"/> Insured |
| <input type="checkbox"/> Return Receipt for Merchandise | <input type="checkbox"/> COD |

7. Date of Delivery

8-20-58

5. Received By: (Print Name)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature: (Addressee or Agent)

X

Libby W. Hunter

PS Form 3811, December 1994

102595-97-B-0179

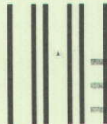
Domestic Return Receipt

DNR/DOGRA dr 5/043/012, 5/051/001

Thomas Letter

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